the stock of these private companies according to the amount of his property, whether he will or no. For a ferry, or a turnpike, or a railway, may be granted to one private person as well as to a corporation, with the privilege of selling shares, and the work is none the less a public work, because in the hands of one man, than if owned by a thousand in the form of a corporation. Some private persons now own long lines of railway in our country. If originally granted to one private person, with the privilege of selling shares, what is taxation for the purpose of buying those shares, but transferring so much of the property of the tax-payers to this private person in payment for a portion of his enterprise?

If men were not accustomed to look upon the subject with a kind of infatuation, it has always seemed to us that no free-minded man could say that there was the slightest distinction in principle between this species of taxation and that which should be applied to enable or to compensate a private person or corporation for running a stage coach or an express wagon through the limits of the municipality. But there is such a fixed delusion in the public mind upon this and many other subjects connected with taxation, that we scarcely dare look for any speedy change. The court did well to take their stand here upon the high ground of truth, for that must, in the end, prevail.

I. F. R.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF GEORGIA.[2]

SUPREME COURT OF NEW HAMPSHIRE.[3]

SUPREME COURT OF NEW YORK.[4]

ADMIRALTY.

Collision.—A large steamer, without tows or other incumbrance, approaching near to smaller ones with tows, under circumstances where collision is liable to occur, is bound to move with caution. She is mistress of her course and motions, and stands in a position of advantage over the others. These have not full power over themselves. Seventeen miles an hour, in such a situation, is too great a rate of speed for the larger and freer vessel to be moving at among vessels having tows: *The Syracuse*, 9 Wall.

Collision.—Where two vessels moving under steam are crossing so as to involve a risk of collision, if the ship which has the other on her starboard does keep out of the way of the other, as a ship in that position is directed to do by the Rules of Navigation, adopted

[1] From J. W. Wallace, Esq., Reporter, to appear in vol. 9 of his Reports.
[2] Prepared by J. H. Thomas, Esq., to appear in 39 or 40 Ga. Rep.
[3] From the Judges of the Court, to appear in 48 or 49 N. H. Rep.
[4] From Hon. O. L. Barbour, Reporter, to appear in vol. 56 of his Rep.

by Congress by the Act of April 29th, 1864, and a collision occurs from the other vessel's not having kept on her course—as under the said rules it is impliedly her duty in such a state of movements to do—the obligation rests on this last vessel to show sufficient causes existing in the particular case which rendered a *departure* from the rule necessary to avoid an immediate danger: *The Corsica*, 9 Wall.

A steam vessel sailing in a harbor like that of New York, where there are vessels at anchor and in motion, is bound to move at no headway not entirely controllable: *Id.*

Collision—Appeals to Supreme Court—Practice.—Where the District and the Circuit Court concur in their view of facts in a collision case in admiralty, the case will come before this court with every presumption in favor of the correctness of the decision appealed from: *The Quickstep*, 9 Wall.

The fact that in a libel for collision a contract of towage is recited in the libel, does not necessarily convert the libel into a proceeding on the contract. Where the real grievance alleged is a wrong suffered by the libellant in the destruction of his boat, by the carelessness and mismanagement of the boat libelled, the reference to the contract is to be regarded as made by way of inducement to the real grievance: *Id.*

An objection of a too general allegation of injury should be made in the court below. It cannot be made here for the first time and after the case has been heard below: *Id.*

In admiralty, an omission to state some facts which prove to be material, but which cannot have occasioned any surprise to the opposite party, will not be allowed to work injury to the libellant, on appeal, if the court can see that there was no design on his part in omitting to state them: *Id.*

It is the duty of a vessel which undertakes to tow other boats, to see that the tow is properly made up and that the lines are strong and securely fastened: *Id.*

AGENT. See *Insurrection—International Law.*

ARBITRATION AND AWARD.

Effect of Submission on Pending Suit.—A mere submission to arbitration of the matter of a pending suit will not, without an award, operate as a discontinuance: *Dinsmore* v. *Hanson*, 48 or 49 N. H.

Where, after such a submission, the suit is with the consent of the parties dismissed, it is within the discretion of the judge at the trial term to strike off the entry of either party, and bring forward the action: *Id.*

BANKRUPTCY.

Custody of Goods—Levy by Sheriff under Process from State Court.—The judge of the Supreme Court has no power by rule, in vacation, to compel an assignee in bankruptcy to turn over to a sheriff of a state court property of the bankrupt, which was in the possession of the bankrupt when the assignee took control of it, but which, it is claimed, had been levied upon by the sheriff, by virtue of a

fi. fa. issued from a judgment of the state court older than the judgment in the Bankrupt Court by which the defendant in the *fi. fa.* was declared a bankrupt: *Hill* v. *Fleming*, 39 or 40 Ga.

Under such a state of facts the sheriff's remedy was by action of trover, or by a proper proceeding in the Bankrupt Court which has jurisdiction over the assignee: *Id.*

Where property is levied on by a sheriff under an execution from a state court, and the defendant is judged a bankrupt, and no proceedings are taken in the Bankrupt Court to compel the property levied upon to be brought into that tribunal for distribution, the adjudication of bankruptcy and the issuing of the ordinary writ of protection is no excuse to the sheriff for not proceeding to sell the property and raising the money: *Sharman* v. *Howell*, 39 or 40 Ga.

BIGAMY. See *Criminal Law.*

BILLS AND NOTES.

Partnership Notes—Liability of Firm.—Evidence that by the articles of partnership one partner had no right to indorse negotiable paper, is inadmissible to defeat a *bona fide* holder of such paper indorsed with the firm name, by a member of the firm, and taken by such *bona fide* holder for value, and without notice of the articles: *Michigan Bank* v. *Eldred*, 9 Wall.

Where a partnership is in the habit of indorsing negotiable paper, having blanks left for the date, and gives the paper so indorsed to a person to use—he to fill the blank when he wishes to use it—the firm is liable on the paper with the date filled in, when, thus complete, it has passed to the hands of innocent *bona fide* holders for value: *Id.*

The power to fill the blanks for dates implies in favor of such holders a power in the person trusted, to change the date, after the note has been written, and before it is negotiated: *Id.*

COLLISION. See *Admiralty.*

COMMON CARRIER.

Action Against—Pleadings in—Contract—In assumpsit against a common carrier, alleging that plaintiffs delivered to defendants a large quantity of wool, to wit: 7,837 pounds, which they promised to transport, and the proof was of a smaller quantity: *Held*, It was no variance: *Deming et al.* v. *Grand Trunk Railroad Co.*, 48 or 49 N. H.

Where the declaration states a delivery of the wool to the carrier at its depot, to be transported immediately to a place named, and avers that in consideration thereof, and of a certain reward, the carrier promised, &c.: *Held*, That on receiving the wool under an arrangement previously made, a duty arose to transport it accordingly, from which the law will imply a promise to do so, and consequently there was no variance in the proof of the consideration: *Id.*

An allegation of a promise to deliver the goods to plaintiffs at Portland, to be transported by another party to Boston, is to be

regarded as a promise to deliver them in Portland simply, and for nothing beyond: *Id.*

Where goods are contracted to be sold at a price fixed, to be delivered at a particular place, and a carrier promises to transport and deliver them in due time, with full notice that the goods are sold if forwarded seasonably, the measure of damages for a breach of his contract by which the consignor loses the sale is the difference between the contract price and the value of the goods when actually delivered: *Id.*

Where a person testified that he was station agent at the depot of the railroad, and had full charge of receiving and forwarding freight there, although he testified that he had no authority to make contracts, and no control over the locomotive power of the road, it was held that a jury might legally find that the corporation held him out as their agent to contract for sending freight the next day: *Id.*

Where there was a contract to carry freight at a particular time, proof that its transportation was prevented by an unexpected rush of freight is not admissible: *Id.*

A common carrier cannot dispute the title of the person delivering the goods for shipment by setting up adverse title in himself, or in third persons, which is not being enforced against him: *Wallace* v. *Mathews*, 39 or 40 Ga.

CONFEDERATE STATES. See *Insurrection.*

How Regarded by the United States Courts—Payment by an Officer of United States of Money to a Creditor of the United States.—The voluntary payment by an officer of the federal government, of money held by him for the government, to a creditor of the United States, cannot be set up by him or his sureties as a defence in a suit on his official bond: *United States* v. *Keehler*, 9 Wall.

The whole confederate power must be regarded by this court as a usurpation of unlawful authority, and its Congress is incapable of passing any valid laws, whatever weight may be given under some circumstances to its acts of force, on the ground of irresistible power, or to the legislation of the *states* in domestic matters; as to which the court decides nothing now: *Id.*

A depository of the money of the United States or a public debtor, cannot defend against a suit on his official bond by proving that he paid the money due the United States to one of its creditors, under an order of the confederate authorities, where he shows no force or physical coercion which compelled obedience to such order: *Id.*

In a suit on an official bond the obligation is not that of a mere depository, but of a person who has made a contract, which he must, at his own peril, perform: *Id.*

The Acts of Congress of April 29, 1864, and March 3, 1865, furnish the only exceptions to this rule which this court can act upon: *Id.*

Constitutional Law.

Ex Post Facto Laws.—A law of a state changing the place of trial from one county to another county in the same district, or even to a different district from that in which the offence was committed, or the indictment found, is not an *ex post facto* law, though passed subsequent to the commission of the offence or the finding of the indictment. An *ex post facto* law does not involve, in any of its definitions, a change of the place of trial of an alleged offence after its commission: *Gut* v. *State*, 9 Wall.

The decision of the highest court of a state, that an act of the state is not in conflict with a provision of its constitution is conclusive upon this court: *Id.*

Courts.

Conflict of Jurisdiction.—When the courts of this state and the courts of the United States have concurrent jurisdiction over the subject matters and parties to a controversy, that tribunal which first actually takes the jurisdiction will retain it: *Trowbridge* v. *Rawson*, Admintr'x, 39 or 40 Ga.

A state court cannot order a suit brought in a United States court to be dismissed or proceedings in it to be stayed, but it may punish its own suitors for disobeying its process of injunction by bringing such suit in contempt of said process: *Id.*

Criminal Law. See *Pleading.*

Confessions.—Whether the confessions of a person accused of crime are voluntary or not, is a question of fact to be determined by the judge who tries the cause, and his decision that they were voluntary, and admitting the evidence, will not be reversed unless a case of clear and manifest error is shown: *State* v. *Squeers*, 48 or 49 N. H.

In such a case it is not sufficient to reverse the decision that the witness pressed the respondent to disclose the really guilty party behind him, that he might be punished, and suggesting that he, the respondent, might be called as a witness against the really guilty party, in which case they would have to get him pardoned, telling him at the same time that he could make him no promises: *Id.*

Confession.—When one charged with larceny was threatened by the owner of the goods to be "prosecuted for damages," and solicited to settle, and he replied he would pay fifty dollars if it could be settled: *Held*, That this was not admissible to show the guilt of the defendant on an indictment for the larceny, the confession, if such it was, having been made under the hope of a settlement: *Train* v. *State*, 39 or 40 Ga.

Bigamy.—An indictment for *bigamy* must allege that the first marriage was lawful, or set forth such facts as will amount to such an allegation: *King* v. *State*, 39 or 40 Ga.

Robbery.—An indictment for *robbery*, which does not charge that the money or other property was taken from the *person* of another

by the defendant, is fatally defective, and it was error in the court to refuse to arrest the judgment rendered upon it: *Stegar* v. *The State*, 39 or 40 Ga.

Larceny—Indictment.—When the defendants were indicted for the offence of simple larceny, and charged with having wrongfully and fraudulently taken and carried away a certain "white hog," without alleging the hog to have been of *any value: Held*, That by the common law, at the time of our statute adopting the same, the value of the property, in an indictment for simple larceny, was required to be alleged and proved on the trial, and that that rule of the common law is still in force in this state, and a failure to allege the value of the property alleged to have been stolen, in the indictment, is a good ground for arresting the judgment after verdict: *Davis* v. *State*, 39 or 40 Ga.

DAMAGES. See *Common Carrier.*

DEBTOR AND CREDITOR.

Imprisonment for Debt—Non-payment of Alimony.—A person imprisoned upon an execution issued to enforce a decree of alimony comes within the act for the relief of poor debtors, and may lawfully be discharged from arrest upon giving bond as provided in the act relating to imprisonment and prison bonds: *Shannon's Case*, 48 or 49 N. H.

Therefore the jailor is not liable to attachment for releasing from imprisonment such debtor upon his giving the required bond: *Id.*

Arrest of Debtor on Execution—Subsequent Bankruptcy.—In a suit against the principal and sureties on a bond given by a debtor arrested on execution, a discharge of the debtor in bankruptcy after breach of the bond, will not avail the sureties as a defence, and a plea by all the defendants of such discharge is bad on demurrer: *Claflin* v. *Cogan*, 48 or 49 N. H.

DEED.

Conditions.—Whatever will pass by words in a grant, will be excepted by like words in an exception: *Page* v. *Palmer and wife*, 48 N. H.

A reservation as well as a grant may be made upon condition: *Id.*

When a grant or reservation is made upon conditions subsequent, the conditions are not favored in law, and are to be strictly construed: *Id.*

In order to bind the heirs or assigns to the performance of such conditions subsequent, they must be expressly mentioned in the condition: *Id.*

Reservation of Road.—A reservation in a grant of the rangeway, "if ever wanted for a road," is not a reservation of a private way, but is for a public highway, and the necessity for it is to be determined by the tribunal empowered to establish highways: *Morgan* v. *Palmer*, 48 or 49 N. H.

Official Record of—Copies as Evidence.—When a deed may properly be recorded in two places or offices, and is so recorded, and the original is lost, one record, or a copy of it, may be introduced to impeach the other, and from the whole the jury may find what the original deed was: *Wells* v. *Jackson Iron Co.*, 48 N. H.

After proof of an original deed to himself, or of his title by descent or devise, a party may use an office copy of a deed to which he is not a party, but which constitutes a part of his chain of title, including the first or earliest title in the chain, as *prima facie* evidence, without showing the loss of the original and without proof of execution or delivery: *Id.*

A party wishing to prove title in a third person, not in the chain of his own or his adversary's title, cannot use a copy until the original has been sought for and proper effort made to obtain it, and then if the copy is used, it is only to prove the contents of the original, after proof that such original was properly executed: *Id.*

When a copy of a deed is not used in a chain of title, it is evidence only of the contents of the paper of which it is a copy, and whatever proof of execution would be required if the original were produced, should also be required in case the copy is used: *Id.*

Ordinarily when a party on trial wishes to avail himself of any instrument in writing lost by time and accident, he should, *first*, prove that an original instrument was duly executed, with all the formalities required by law, and *secondly*, that the instrument so executed has been lost; then only can he give evidence of its contents: *Id.*

If the last instrument was attested by witnesses, they should be called or their absence properly accounted for before other testimony can be received: *Id.*

But when the witnesses cannot be produced, the admissions of the opposite party of the existence of such documents may be resorted to, and when that and all other direct evidence of the execution or former existence of such instrument is wanting, the fact may be proved by circumstances: *Id.*

When a deed is shown to have been properly executed and attested, acknowledged and recorded, that is *prima facie* evidence of its delivery: *Id.*

But this evidence of delivery is not conclusive, and may be rebutted: *Id.*

The words *to*, *from* and *by*, when used to express boundaries, are ordinarily terms of exclusion, and are always to be understood in that way, unless there is something in the connection which makes it manifest that they were used in a different sense: *Id.*

EQUITY.

Parol Gift of Land—When Enforced.—Equity protects a parol gift of land equally with a parol agreement to sell it, if accompanied by possession, and the donee, induced by the promise to give it, has made valuable improvements on the property. And this is particularly true where the donor stipulates that the expenditure shall be made, and by doing this makes it the consideration or condition of the gift: *Neale* v. *Neales*, 9 Wall.

The principle applied in the case of an antenuptial parol promise by a father, to give to a lady about to marry his son (an improvident person), a lot of ground, she promising at the time to lay out her own money in building a house upon it for the benefit of herself and family, and where possession was delivered and the house was so built, but the father refused to convey the lot: *Id.*

In case of an alleged contract, by a father, of this kind, reasonable certainty as to the fact and terms of it is all that equity requires: *Id.*

The breach of such a contract is not to be compensated by damages, nor is the purpose of the contract so answered. It is a case for specific performance: *Id.*

EVIDENCE. See *Common Carrier—Deed—Husband and Wife.*

Telegraphic Dispatch.—Evidence that a telegraphic dispatch was sent from Northumberland to Montreal, addressed to A. G., and that a telegraphic reply was received very soon after, purporting to come from A. G. at Montreal, is not competent to show that A. G. was at the time in Montreal: *Howley* v. *Whipple et al.*, 48 N. H.

Written Memorandum—Witness's Recollection.—When a witness testifies that at or about the time of a transaction or conversation, he made a memorandum in writing of the same; that he should not have recollected the particulars of the transaction or conversation if he had not refreshed his memory by referring to the memorandum, but that having thus refreshed his memory, he is now able to state those particulars from recollection, the memorandum is not competent evidence to be submitted to the jury: *Kelsen* v. *Fletcher*, 48 N. H.

The memorandum becomes evidence only when the witness is unable, after examining it, to state the particulars from recollection, and when he can swear that he knew it to be correct at the time it was made: *Id.*

The price at which a cow was sold, three years after, may be competent evidence as to her value at the time in question, whether such sale was before or after suit brought: *Id.*

HIGHWAY. See *Deed.*

Dedication to Public Use—Title by Prescription.—The use of a way for more than twenty years over ground in front of an academy building, which was thrown open as a common, with occasional repairs upon it and the filling up of gullies, does not, as a matter of law, establish a right by prescription: *Burnham* v. *McQuestion*, 48 or 49 N. H.

Where such land was thrown open as a common, and after twenty years user the owner built a fence across the way with a gate at that point, and informed the person using it that it was done to prevent such use, in reply to which no right of way was asserted, it was *Held*, That it was competent for a jury to find that such user was permissive and not adverse: *Id.*

Husband and Wife.

Evidence of Husband against the Wife.—In an action against husband and wife, by a judgment creditor of the former, to have his judgment declared a lien upon land purchased by the husband in the name of his wife, the examination of the husband in supplementary proceedings instituted against him after third persons had gone into possession of the premises under the wife, is competent evidence against the husband but not against the wife: *Gillespie* v. *Walker and wife*, 56 Barb.

Nor is a declaration of the husband, made after the title to the land has become vested in the wife, that he has put his property out of his hands and got it so fixed that no creditor can reach it, admissible in evidence against the wife. After the title is vested in the wife, it cannot be diverted by the subsequent declaration of the husband: *Id.*

Insurance.

Condition as to "any Change of Title" in the Property insured.—The sale of property and taking back a mortgage to secure the purchase-money, does not change the title, within the meaning of a condition, in a policy of insurance, that in case of "any change of title" in the property insured, the policy shall cease and determine: *Kitts et al.* v. *The Massasoit Insurance Co.*, 56 Barb.

Assignment of Policy.—Where, upon a sale by one of the members of a firm of all his interest in the partnership property and effects, there was no assignment or transfer, of any kind, of a policy of insurance upon the partnership property to the purchaser, or any delivery of the policy, or of a certificate of removal to him: *Held*, That although the language of the instrument of sale, taken by itself, was broad enough to include the policy as one of the *choses in action* of the firm, yet as it was manifest, from the whole transaction and its surroundings, that no such thing was intended, the policy did not pass by the instrument: *Id.*

Insurrection. See *Limitations.*

Proceedings for Forfeiture.—The seizure of the property of which a forfeiture is sought by proceedings had under the Act of Congress of July 17th, 1862, "to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," is the foundation of the subsequent proceedings. It is essential to give jurisdiction to the court to decree a forfeiture: *Pelham* v. *Rose*, 9 Wall.

By the seizure of a thing is meant the taking of the thing into possession, the manner of which, and whether actual or constructive, depending upon the nature of the thing seized. As applied to subjects capable of manual delivery the term means caption, the physical taking into custody: *Id.*

Where a writ of monition issued upon a libel of information, filed by the United States against a promissory note, commanded the marshal "*to attach the note and to detain the same in his custody until*

the further order of the court respecting the same;" and the marshal returned the writ with his endorsement thereon that he had "*arrested the property within mentioned;*" *Held*, in an action against the marshal for a false return: 1st, that due and legal service of the writ required the marshal to take the note into his actual custody and control; and 2d, that the return of the marshal signified that he had actually taken the note into his custody and under his control: *Id.*

Agency.—The war revoked the agency of a citizen of the State of Georgia, in said state, for a citizen of Massachusetts, which existed when the war commenced, without any act of revocation or renunciation by the parties: *Howell* v. *Gordon*, 39 or 40 Ga.

INTERNATIONAL LAW. See *Insurrection.*

Intercourse with Enemy.—Intercourse during war with an enemy is unlawful to parties standing in the relation of debtor and creditor as much as to those who do not: *United States* v. *Grossmayer*, 9 Wall.

Conceding that a creditor may have an agent in an enemy's country to whom his debtor there may pay a debt contracted before the war, yet the agent must be one who was appointed before the war. He cannot be one appointed during it: *Id.*

A transaction originally unlawful—such as a person's unlawful trading in behalf of another with an enemy—cannot be made lawful by any ratification: *Id.*

LARCENY. See *Criminal Law.*

LIMITATIONS, STATUTE OF.

Suspended during War—Appeals to Supreme Court.—The doctrine declared in *Hanger* v. *Abbott*, 6 Wallace, 532, that statutes of limitations do not run during the rebellion against a party residing out of the rebellious states, so as to preclude his remedy for a debt against a person residing in one of them, held applicable to the Judiciary Acts of 1789 and 1803, limiting the right of appeal from the inferior federal courts to this court, to five years from the time when the decree complained of was rendered: *The Protector*, 9 Wall.

The Act of March, 1867, allowing appeals from federal courts in districts where the regular sessions of such courts subsequently to the rendering of the judgment had been suspended by rebellion, to be brought within one year from the date of the passage of the act, is an enabling act, not a restraining one: *Id.*

MALPRACTICE.

Action against Physician for.—A case of action against a physician or surgeon arising from want of care or skill in the cure of a patient, does not survive against an executor: *Vittum* v. *Gilman, Adm'r.*, 48 or 49 N. H.

Nor can a suit be maintained against the executor to recover for

increased expenses incurred by such patient, where they are merely incidental to an injury which is purely personal and dies with the wrong doer: *Id.*

Master and Servant.

Liability of Master to Servant for Negligence.—Where in an action brought against a corporation, by one of its laborers employed in blasting, for an injury occasioned by the premature discharge of a blast, loaded with a newly invented powder, which he was directed to use by the defendant's foreman or superintendent; the complaint alleged that the company furnished the powder for use in its ordinary and appropriate business; that it had never been used as an explosive in blasting, and was, in fact, unfit and unsafe for such use; and that the plaintiff was ignorant of its dangerous properties: *Held*, On demurrer, that a right of action was unquestionably stated: *Spelman* v. *The Fisher Iron Company*, 56 Barb.

Held, Also, That the risk of personal injury in blasting with the ordinary appliances used for that purpose, the plaintiff assumed, under his contract with the company, to labor in that employment; but not those risks attendant upon the use of an unusual, untested and exceedingly dangerous article which could not be tamped without inevitable explosion; the dangerous quality of which was unknown to him: *Id.*

That it was gross negligence in the company to furnish such an article for the laborer's use, without giving him information in that particular; whether the company was aware of its dangerous quality, or furnished it for use without having taken any steps to obtain such knowledge: *Id.*

Municipal Corporation.

Liability for Property Destroyed by a Mob.—Where an individual sues the town or city for damages for the destruction of his property by a mob, under ch. 1519, Laws of 1854, it is immaterial whether the defendant could or ought to have prevented the destruction of the plaintiff's property: *Chadbourne* v. *New Castle*, 48 N. H.

It is also immaterial whether any or all of the rioters were citizens of the defendant town or city: *Id.*

In such case the destruction of the plaintiff's property would be *caused* by his illegal or improper conduct, within the meaning of the word "caused" as used in the statute, if without such conduct, on his part, the destruction would not have occurred: *Id.*

It is immaterial how remote in time the illegal or improper conduct of the plaintiff was, if, in fact, the destruction of his property was caused by it: *Id.*

The "improper" conduct referred to in this statute, is such conduct as a man of ordinary and reasonable care and prudence would not, under the circumstances, have been guilty of; and the defendant town or city will not be liable, if the destruction of the plaintiff's property would not have happened, but for something said or

done by plaintiff, which a man of ordinary prudence, under the circumstances, would not have said or done: *Id.*

PARTNERSHIP. See *Bills and Notes.*

PLEADING. See *Common Carrier.*

Several Counts—Some Good and Some Bad.—In an indictment containing several counts, with a general verdict of guilty, the verdict will be sustained and the judgment will not be arrested, if there is one good count in the indictment: *Glines* v. *Smith*, 48 N. H.

But in a civil suit where there are several counts, on each of which damages are claimed, with a general verdict for plaintiff, if one count is bad, the judgment must be arrested on motion, because the court have no means of apportioning the damages: *Id.*

But where in a civil suit there are several counts, but all describing the same cause of action, each setting it forth in a different way, and where damages are sought to be recovered on some one count only, and these facts appear in the case, or from the certificate of the judge, who tried the case; and also, that all the evidence was applicable to the good count, and that the same was fully proved, the verdict will be sustained if there is one good count in the writ, even though all the rest may be bad, and the verdict may be amended so as to apply to the good count when necessary, but the judgment will not be arrested: *Id.*

It will be irregular for the judge at the trial of a cause, even at the request of the jury, to send to them minutes of "the strongest or most direct evidence" on one side alone, on a material point, and a verdict will be set aside for that cause: *Id.*

When witnesses are called to impeach a principal witness by stating that such witness has, out of court, made statements in conflict with the testimony on the stand, such witness may be recalled and asked the direct question whether or not he made the statement thus imputed to him, though the question may be leading in form: *Id.*

SET-OFF.

Assigned Claim.—In a suit by A. *v.* B., B. cannot file in off-set a judgment recovered by M. against A. and assigned to B. before the commencement of A.'s suit: *Rowe* v. *Langley*, 48 N. H.

STAMPS.

On Process—Power of Amendment.—Notwithstanding the Internal Revenue Act of Congress required all stamps to instruments theretofore issued to be affixed by the collector of internal revenue, it did not deprive the state courts of the power vested in them by virtue of section 327 of the code, which provides that "when a party shall give, in good faith, notice of appeal from a judgment or order and shall omit, through mistake, to do any other act necessary to perfect the appeal, or to stay the proceedings, the court may permit an amendment on such terms as may be just:" *Coppernoll* v. *Ketcham*, 56 Barb.

Although the section of the Act of Congress which allowed parties desiring to use in court instruments which had not been properly stamped, to affix such stamp in the presence of the court, and thereupon to use such instruments in evidence, was amended so as to require such stamps to be affixed by the collector of internal revenue, yet it was not intended to include such instruments as were in the nature of process of courts of record: *Id.*

Nor could it have been intended to take from the state courts the power to control and amend their process as they should deem proper, provided the revenue contemplated by the Internal Revenue Act was secured to the general government. But the amendment was intended to apply to such instruments as were the acts of individuals or corporations only: *Id.*

Congress has no power to prohibit state courts from taking jurisdiction of an action for the want of a revenue stamp: *Id.*

After the respondent has appeared generally, on an appeal to the county court, and has noticed the cause for trial, and moved the trial of it, it is too late for him to object that the appeal has not been regularly effected for the want of a revenue stamp upon the notice of appeal: *Id.*

Trespass.

Equitable Jurisdiction in Cases of.—A court of equity will not entertain a bill to restrain the committing of an ordinary trespass merely upon the ground that the defendant is not pecuniarily able to respond to the damages that may be recovered: *Morgan* v. *Palmer*, 48 or 49 N. H.

United States Courts. See *Courts—Limitations.*

Jurisdiction—Claim of Title under the United States.—A question of federal jurisdiction, under the 25th section of the Judiciary Act, is not necessarily raised by every suit for real estate in which the parties claiming under the federal government are at issue as to which of them is entitled to the benefit of that title: *Carpenter* v. *Williams*, 9 Wall.

And when the issue turns solely upon the personal identity of the individual to whom the recorder of land titles confirmed, or meant to confirm a lot of ground—as *ex. gr.*, whether when he confirmed the land in the name of *Louis* Lacroix he really meant *Joseph* Lacroix—a matter to be determined by the rules of common Law—this court has no jurisdiction, even though the parties claimed under the federal government: *Id.*

United States Officers. See *Confederate States.*

Writ of Entry.

Abatement—Pleading.—In a writ of entry at common law, the death of a sole tenant of the freehold necessarily abates the writ: *Pierce* v. *Jaquith*, 48 N. H.

The writ of entry which our statute authorizes to foreclose a

mortgage on real estate, constitutes an exception to the above rule: *Id.*

The provisions of our statute authorizing administrators to prosecute and defend in writs of entry pending at the decease of their intestate, apply only to cases of mortgages and to cases where the administrator, as the representative of the estate, has an interest in the land, and cannot apply to cases where the land descends to and vests in the heir: *Id.*

When a tenant in a writ of entry dies, and his administrator is summoned in to defend, it is the better course in practice for him to appear, and if he makes any claim for the estate, to state it in his plea, otherwise to plead *non-tenure*, or disclaim, when the suit will abate: *Id.*

Color of Title—Constructive Possession of Land.—There can be no constructive possession of land without color of title: *Wells* v. *Jackson Iron Co.*, 48 N. H.

If the plantiff's grantor, having color of title to lot A, enters upon any part of that lot, this gives him constructive possession of the whole lot, and that would give his grantee, this plaintiff, such seizin of the whole lot that he could maintain a writ of entry against one entering upon any part of said lot without title: *Id.*

But if plaintiff's grantor, having color of title to lot A only, makes an entry upon lot B, and takes possession of a part of it, and afterwards conveys lot A only to the plaintiff, the plaintiff thereby acquires no right to or seizin of lot B: *Id.*

If one should take possession of the summit of Mount Washington, and then convey the same specifically, or the lot or grant which contains it, to the plaintiff, he may maintain a writ of entry against any one subsequently entering without rights upon said summit: *Id.*

But if the plaintiff's grantor, having taken possession of the summit of Mount Washington, conveys to plaintiff some other lot which does not embrace such summit, the plaintiff can take no benefit from his grantor's possession of lands which have not been conveyed to him: *Id.*

In this case plaintiff's grantor, having color of title to Thompson and Meserves' purchase, from one who had made an entry thereon, entered upon the summit of Mount Washington, and afterwards conveyed Thompson and Meserves' purchase to the plaintiff. The plaintiff had never been in possession of the summit of the mountain, and he introduced no evidence tending to show that said summit was within the limits of said purchase: *Held*, That the plaintiff could not maintain a writ of entry for the summit of Mount Washington: *Id.*

An entire stranger to a title, one who shows no interest whatever in the premises, is not in a position to object to the title of his opponent. But when he shows himself interested in the title to the premises, he may then require his opponent, claiming the same premises, to show not only an authority to convey and a conveyance under it, but that the authority under which the sale was made was strictly pursued: *Id.*